

**From:** Anthony Mirvish  
**To:** Microsoft ATR  
**Date:** 1/27/02 5:10pm  
**Subject:** Microsoft Settlement

Dear sir,

I am writing in connection with the proposed settlement of the Microsoft anti-trust case and to voice my support for the complete vindication of Microsoft and its policies. In reaching your final decision on the disposition of this case I would encourage you to consider the following points.

a.. The anti-trust laws are based on a fundamentally false and reasonable view of so-called "perfect" competition.

b.. Under this view, companies that actually attempt to change market conditions i.e. to compete, can be charged with anti-competitive measures.

c.. Competition is dynamic; no particular configuration in the market at any one time is fixed. If some new product that made personal computers obsolete were developed, Microsoft would not be able to give its products away. If it anticipated such a development, it would have every right to them.

d.. Companies can be prosecuted for raising prices, lowering prices, holding prices firm, entering into agreements with other companies, and for improving the efficiency and quality of their products (as in US versus Alcoa).

e.. This creates arbitrary and essentially ex post facto laws, preventing companies from knowing in advance when or if particular measures will cause them to violate the anti-trust laws.

f.. It is unjust to attempt to apply laws whose basic concepts are unreasonable, whose application is arbitrary, and which (if viewed as ex post facto laws) unconstitutional.

g.. The historical basis for the anti-trust laws is false.

h.. Even the great so-called monopoly cases of the early 20th century (esp Standard Oil) misrepresented the operations of the market.

i.. In most cases, asymmetrical competition and the effect of different products have been ignored.

j.. In Standard Oil, the enormous financial gains of entering the oil market had already brought Standard's share down to 60% (and dropping) at the time it was broken up.

k.. An industry consisting of a few companies, making marginal changes in price and market share, is not an example of competition.

l.. True competition and innovation (which Microsoft is alleged to have stifled), involve the development of different products, not complaints about being unable to offer a similar but inferior product (which is what Microsoft's competitors desire).

m.. Microsoft has made an enormous investment in developing good quality products.

n.. There are several other operating systems and browsers on the market. No one is prevented from using them. Bill Gates did not stop Linux from developing.

o.. In areas where Microsoft's products are less than perfect (for example, I prefer WordPerfect to Word), choosing competitor's products produces no ill-effect. If I tried to not pay taxes for a year, the effect would be different. This is the difference between true coercion and having to make a choice in the market.

p.. More than 95% of all anti-trust cases are brought by competitors of the company being sued.

q.. Anti-trust encourages political/judicial resolution of market competition. PACS and donations to political from technology companies have skyrocketed since this case was brought.

r.. One may disagree with Microsoft's concept of bundling its products with its operating system, but it is a perfectly reasonable and innovative concept of how software should operate. It is distinct from that offered by Microsoft's competitors.

s.. None of Microsoft's competitors have behaved as if they really want to compete i.e. by developing superior or fundamentally different and innovative products and then marketing them.

t.. None of Microsoft's competitors have been willing to accept the voluntary decision of millions of satisfied customers, all of whom have accepted and seen merit in Microsoft's products (and in its concept of bundling them with an operating system).

u.. It is wrong to force individuals to subsidize or support the products of companies that they have already rejected.

v.. Individuals (and by extension companies) have a right to their own property. This means that they have a right to determine the terms on which those products are developed or sold.

w.. The right to own property means the right to use and dispose of it - this involves the right to make contracts, and contracts are inherently exclusionary in that they are between a finite number of parties.

x.. If wealthy private individuals like Mr. Gates do not have a right to their own property, which they have built-up and earned lawfully, or to hold it only by political sufferance, then none of us ultimately have a right to our own property.

y.. No one is supposed to lose their rights just because they are rich and successful. No part of our constitution says otherwise. It speaks of equal protection for all.

z.. No one has a right to another person's property, person, time or good opinion.

aa.. There is no such thing as a right to a particular market share other than the one that one has earned.

ab.. There is no such thing as a right to immunity from failure or from the effects of poor business decisions (or to the consequences of superior decisions made by others).

ac.. There is no such thing as a right to a given product, at a given price, at a given time. Consumers have only four honest choices in a market: buy what is offered on the terms set by the seller, do without the product, purchase another product (if available), persuade the seller to change his terms (perhaps by using less). There is also the option of developing a competing product. Microsoft's "competitors" have been unwilling to truly do the latter and refuse to accept the judgement of millions of satisfied customers.

ad.. Microsoft's "competitors" should not be allowed to profit through the courts when they have failed in the marketplace.

Sincerely,

Anthony Mirvish

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